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APR 12 2012

PTO/SB/65 (03-09)  
Approved for use through 03/31/2012. OMB 0861-0016  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE  
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**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**

Docket Number (Optional)

Mail to: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450  
Fax: (571) 273-8300

04/17/2012 DALLEN 00000004 6772077

NOTE: If information or assistance is needed in completing this form, please contact Patents Information at (571) 272-3282.

01 FC:1599

1830.00 OP

Patent Number: 6,772,077

Application Number: 09/762,562

Issue Date: 08/03/2004

Filing Date: 02/13/2002

**CAUTION:** Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable:

The above-identified patent:

- ☐ is a reissue of original Patent No. \_\_\_\_\_ original issue date \_\_\_\_\_  
original application number \_\_\_\_\_  
original filing date \_\_\_\_\_
- ☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application  
\_\_\_\_\_ filed on \_\_\_\_\_

**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

4/12/12  
Date

Cherri A. Simon  
Signature

Cherri A. Simon  
Typed or printed name of person signing Certificate

[Page 1 of 4]

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 5 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount or time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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PTO/SB/55 (03-09)  
Approved for use through 03/31/2012. OMB 0851-0016  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

1. SMALL ENTITY

☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

| NOT Small Entity                               |             |        | Small Entity                      |             |        |
|--|-------------|--------|-----------------------------------|-------------|--------|
| Amount   | Fee         | (Code) | Amount                            | Fee         | (Code) |
| <input checked="" type="checkbox"/> \$ 1130.00 | 3 ½ yr fee  | (1551) | <input type="checkbox"/> \$ _____ | 3 ½ yr fee  | (2551) |
| <input type="checkbox"/> \$ _____              | 7 ½ yr fee  | (1552) | <input type="checkbox"/> \$ _____ | 7 ½ yr fee  | (2552) |
| <input type="checkbox"/> \$ _____              | 11 ½ yr fee | (1553) | <input type="checkbox"/> \$ _____ | 11 ½ yr fee | (2553) |

MAINTENANCE FEE BEING SUBMITTED \$ \_\_\_\_\_

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 700.00 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.

SURCHARGE FEE BEING SUBMITTED \$ 700.00

5. MANNER OF PAYMENT

- ☐ Enclosed is a check for the sum of \$ \_\_\_\_\_
- ☐ Please charge Deposit Account No. \_\_\_\_\_ the sum of \$ \_\_\_\_\_
- ☒ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☒ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. 12-0769

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APR 12 2012

PTO/SB/85 (03-09)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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7. OVERPAYMENT

As to any overpayment made, please

☒ Credit to Deposit Account No. 12-0769

OR

☐ Send refund check

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

  
Signature(s) of Petitioner(s)

April 12, 2012

Date

David A. Divine

Typed or printed name(s)

51275

Registration Number, if applicable

601 W Riverside, Suite 1400

Address

509-944-4733

Telephone Number

Spokane, WA 99201

Address

ENCLOSURES:

- ☒ Maintenance Fee Payment  
☒ Statement why maintenance fee was not paid timely  
☒ Surcharge under 37 CFR 1.20(f)(1) (fee for filing the maintenance fee petition)  
☐ Other:

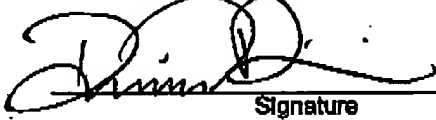
PTO/SB/65 (03-09)

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U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."



Signature

David A. Divine

Type or printed name

April 12, 2012

Date

51275

Registration Number, if applicable

**STATEMENT**

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

See attached Statement

(Please attach additional sheets if additional space is needed)

# **STATEMENT**

(attachment to PTO/SB/65)

The following is an account of the activities that occurred related to this matter:

- In 2007 our client Telect, Inc. requested transfer of a portfolio of issued patents and pending applications to our firm, Lee & Hayes, from another law firm ("the Transfer"). This Transfer included the instant patent, U.S. Patent No. 6,772,077, among others.
- Our firm entered the transferred issued patents and patent pending applications into our docketing system according to our normal practices.
- We then obtained and filed Power of Attorney forms in each of these issued patents and pending patent applications. The Power of Attorney was filed in the instant patent on August 2, 2007 and accepted by the USPTO on November 2, 2007.
- On March 26, 2012, our firm received a Notice of Patent Expiration, dated March 19, 2012, for another issued patent that was included in the Transfer.
- On the same day we filed a Petition to Accept Unintentionally Delayed Payment of Maintenance Fee, and paid the petition fee and maintenance fee for the other matter.
- On March 28, 2012, our firm notified the client of the Notice of Patent Expiration and the subsequent Petition to Accept Unintentionally Delayed Payment of Maintenance Fee for the other matter.
- The expiration of the other patent was determined to be due to a docketing error.
- On March 29, 2012, we began to manually audit all of the files for our client to make sure there were no additional docketing errors.
- On the April 4, 2012, we concluded the manual audit.
- The audit identified the instant patent as being issued, but did not have any maintenance fees docketed.
- A search of the USPTO maintenance fee records indicated that the instant patent had expired for failure to pay maintenance fees, but our docketing system did not include any indication why the patent had expired.
- Between April 4-6, 2012, a search was conducted of both firm and individual archived email accounts to determine whether we had received an instruction from the client to allow this patent to expire. No such instruction was found.
- On April 6, 2012, a search was conducted of our document management system as well as our docketing email system to determine if a Notice of Patent Expiration had been received from the USPTO. The search revealed no record of ever having received a Notice of Patent Expiration for the instant patent.
- On April 9, 2012, we called the Office of Petitions at the USPTO and were told that we would need to file a Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent.
- On April 9, 2012, we met to discuss filing the Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent, and adjusting our new file intake processes to prevent similar oversights in the future.
- Between April 9-10, 2012, we double checked the results of our searches on April 4-6.

US Patent: 6,772,077

US Patent Application: 09/762,562

- On April 11, 2012, we notified our client that the instant patent had expired for failure to pay maintenance fees, and requested that they confirm that they did not intend for this patent to expire.
- On April 12, 2012, the client confirmed that they did **NOT** intend of the instant patent to expire.
- We immediately prepared and filed the accompanying Petition to Accept Unavoidably Delayed Payment of Maintenance Fee for the instant patent.

We respectfully request at the Office grant our petition and reinstate the referenced patent.

US Patent: 6,772,077  
US Patent Application: 09/762,562

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**APR 12 2012**

PTO/SB/46 (03-08)

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**MAINTENANCE FEE TRANSMITTAL FORM**

*(Do not submit this form electronically via EFS-Web)*

**Address to:**  
Director of the United States  
Patent and Trademark Office  
Attn: Maintenance Fee  
2051 Jamieson Avenue, Suite 300  
Alexandria, VA 22314

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Director of the United States Patent and Trademark Office, Attn: Maintenance Fee, 2051 Jamieson Avenue, Suite 300, Alexandria, VA 22314" on \_\_\_\_\_

- OR -

Signature \_\_\_\_\_

Fax to: 571-273-6500

Typed or printed name \_\_\_\_\_

Enclosed herewith is the payment of the maintenance fee(s) for the listed patent(s).

1. ☐ A check for the amount of \$ \_\_\_\_\_ for the full payment of the maintenance fee(s) and any necessary surcharge is enclosed.
2. ☒ Payment by credit card. Form PTO-2038 is enclosed.
3. ☐ The Director is hereby authorized to charge \$ \_\_\_\_\_ to cover the payment of the fee(s) indicated below to Deposit Account No. \_\_\_\_\_.
4. ☒ The Director is hereby authorized to charge any deficiency in the payment of the required fee(s) or credit any overpayment to Deposit Account No. 12-0769.

\* Information required by 37 CFR 1.366(c) (columns 1 &amp; 2). Information requested under 37 CFR 1.366(d) (columns 3, 4, &amp; 5).

| Item | Patent Number* | U.S. Application Number*<br>(e.g., 09/555,555) | Maintenance Fee Amount<br>(37 CFR 1.20(a)-(g)) | Surcharge Amount<br>(37 CFR 1.20(h)) | Payment Year<br>(select one below)<br>Column 5 |         |          |
|------|----------------|--|--|--------------------------------------|--|---------|----------|
|      |                |  |  |                                      | 3.5 yrs  | 7.5 yrs | 11.5 yrs |
| 1    | 6,772,077      | 09/762,562                                     | 1130.00  | 700.00                               | <b>X</b>                                       |         |          |
| 2    |                |  |  |                                      |  |         |          |
| 3    |                |  |  |                                      |  |         |          |
| 4    |                |  |  |                                      |  |         |          |
| 5    |                |  |  |                                      |  |         |          |

Subtotals: Columns 3 &amp; 4

1130.00

700.00

Total Payment

1830.00

☐ \_\_\_\_\_ additional sheets attached for listing additional patents.

**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on Form PTO-2038.

Respectfully submitted,

Customer's Signature

Customer's Name David A. DivineRegistration Number, if applicable: 51275Telephone: 509-844-4733Fax: 509-322-8979

Note: All correspondence will be forwarded to the "Fee Address" or to the "Correspondence Address" if no "Fee Address" has been provided. See 37 CFR 1.363.

Payment of small entity fee is appropriate if small entity status still exists, see 37 CFR 1.27(g). To establish small entity status or to change status from small to large entity, a written assertion is required. See 37 CFR 1.27 and 1.33(b).

**\*\* WHERE MAINTENANCE FEE PAYMENTS ARE TO BE MADE BY AUTHORIZATION TO CHARGE A DEPOSIT ACCOUNT, BOTH THE NAME AND SIGNATURE OF AN AUTHORIZED USER ARE REQUIRED.**

This collection of information is required by 37 CFR 1.368. The information is required to obtain or retain a benefit by the public which is to be (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 5 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Director of the United States Patent and Trademark Office, Attn: Maintenance Fee, 2051 Jamieson Avenue, Suite 300, Alexandria, VA 22314.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.